

AREC

**ARKANSAS
REAL ESTATE COMMISSION**

PROPERTY MANAGEMENT SELF-EVALUATION GUIDE



March 2010

PROPERTY MANAGEMENT SELF-EVALUATION GUIDE

Property Management activities include the leasing, managing, marketing, and overall maintenance of the property of others. Property Management involves more book-keeping and paperwork than most other areas of real estate practice. AREC Investigators continue to see deficiencies during office examinations of Property Management transactions. That is why this guide was developed, with input from Investigators, to assist you in complying with the Real Estate License Law and Commission Regulations.

This should be used as a guide for Property Management practice in Arkansas. This material applies whether you are managing one or one hundred properties. Review your operating procedures with this Self-Evaluation Guide. If you have any questions, please contact an AREC Investigator. (See page 11 for names and numbers.)

This Self-Evaluation Guide consists of questions you might find useful to ask yourself about your practices, policies and procedures regarding property management. Review and analyze your own priorities in accordance with Arkansas Real Estate Commission's Real Estate License Law and Regulations.

Take a few minutes to answer questions in the categories that follow.

PROPERTY MANAGEMENT FORMS

Property Management Agreement:

A contract between the Property Manager (Principal Broker) and owner of the property which outlines the responsibilities and authority of the Principal Broker.

- ◆ Do you have signed current Management Agreements with owners of each and every property that you manage?

Lease Agreement:

A contract between the landlord and tenant establishing the tenant's rights to use and possess the property according to agreed to terms and conditions.

- ◆ Do you have current Lease Agreements with each and every tenant of property you manage?



Commission Regulation 10.10

(a) states: “Except as provided in Regulation 10.10 (b), a licensee, for the protection of the public and of all parties with

whom the licensee deals, shall see that the exact agreement of the parties regarding real estate is in writing. A licensee shall also see that clients and other parties to the transaction with whom the licensee deals receive copies of such agreements signed by all parties. (Examples: Exclusive agency agreements or contracts, real estate contracts, closing statements, lease agreements, management agreements, financial obligations and commitments, etc.) It is strongly recommended that a licensee obtain written acknowledgment from the buyer and or seller that the buyer and or seller have received said signed copies.”

TRUST ACCOUNT, TRUST FUNDS AND ACCOUNTING

Trust Account:

Bank accounts into which trust funds (and only trust funds) are deposited.



- ◆ Is your trust account identified as a “trust or escrow” account?
- ◆ Is your trust account non-interest bearing?

Commission Regulation 10.8 (c) states: “A principal broker who receives trust funds shall either maintain a separate trust account or shall have an escrow agent for all such trust funds. The principal broker of the firm shall be solely responsible and accountable for all trust funds received by the firm and all deposits to or disbursements from the trust account. The principal broker shall also be responsible and accountable for any funds delivered to an escrow agent selected by the principal broker, but shall not be responsible for funds delivered to an escrow agent selected by the parties. Except as authorized by Regulations 10.8 (i) and 12.2, the trust account shall be non-interest bearing. The name on the account shall include either “trust” or “escrow” and must be located in an institution insured by either the FDIC or some other insuring agency of the federal government.”

- ◆ Do you reconcile your trust account bank statement monthly?

Commission Regulation 10.8 (g)(2) states:

“All trust account bank statements shall be reconciled in writing at least monthly and balanced to the total amount of trust funds deposited in the account which have not been disbursed. Copies of such reconciliations shall be kept by the broker for at least three (3) years or for such time as may be required by law, whichever is greater.”



Trust Funds:

- ◆ Do you deposit trust funds ***only*** in your trust account?



Commission Regulation 10.8 (a) states:

“Trust funds means and includes money or other things of value not belonging to the principal broker but which are received by the principal broker or any of the principal broker’s licensees in connection with a real estate transaction or real estate activity, including, without limitation, clients’ moneys, earnest moneys, rents, advance fees, deposits, etc. For purposes of the Arkansas Real Estate License Law and commission regulations, any funds deposited in a broker’s trust account are presumed to be trust funds.”

- ◆ Do you maintain brokers’ funds in the trust account?

Commission Regulation 10.8 (d) states: A principal broker may maintain the broker’s own funds in a designated trust account only when they are clearly identified as the broker’s deposit and only for the following purposes: (1) If the bank in which the account is maintained designates a specific minimum balance that must be maintained in order to keep the account open, the broker may maintain that amount in the account designated as the broker’s funds. (2) If the bank in which the account is maintained requires a service charge to be paid for the account, the

broker may maintain a reasonable amount to cover that service charge in the account in the broker’s name, provided, however, that such amount shall not exceed the total of six (6) months service charges.”



Security Deposits:

- ◆ Do your lease agreements show the amount of security deposits paid by the tenants?
- ◆ Are you holding those security deposits in a trust account?



Commission Regulation 10.8 (h)(1) states:

“All security deposits made under a rental or lease agreement shall be deposited in the principal broker’s trust account, including those deposits made on property owned by any licensee licensed under the principal broker unless the licensee who owns the property has a written agreement with the tenant providing that the licensee may keep

the security deposit in the licensee’s separate account. A copy of any such agreement shall be furnished to the principal broker by the licensee.”

Rents:

- ◆ Do you deposit rental monies and other funds belonging to the client received into a trust account within three (3) days of receipt?
- ◆ Do you deposit clients’ monies received or held in reserve for repairs into a trust account?

Commission Regulation 10.8 (g)(1) states: (g) (1) "No later than three (3) days following the execution of a real estate contract by both seller and buyer, all trust funds delivered to the principal broker, shall be either deposited in the trust account, delivered to an escrow agent, or deposited pursuant to a written agreement by the seller and buyer. All other funds delivered to the broker pending performance of any act shall

be, no later than three (3) days, either deposited in the trust account, delivered to an escrow agent, or deposited pursuant to a written agreement by the seller and buyer. Should the third (3rd) day be a Saturday, Sunday, or legal holiday, then the third (3rd) day is extended to the next day which is not a Saturday, Sunday, or legal holiday. The broker shall maintain an accounting of all funds delivered to the broker and shall keep a signed receipt for any funds the broker



delivers to an escrow agent. The broker remains responsible for the funds if the broker selected the escrow agent, but not if the parties selected the escrow agent. A broker shall at all times keep detailed records of all funds coming into the broker's possession and all disbursements made by the broker."

ACCOUNTING



Owner Summary Statements:

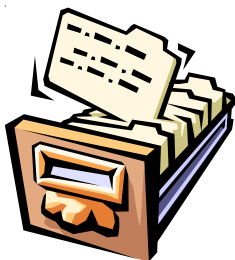
An accounting to the owner of rents or other funds received, belonging to the owner, and expenses paid from these funds.

- ◆ Do you provide a monthly accounting to the owner?
- ◆ Do you maintain individual ledgers for each client, used to record rents or other funds received and payments made, and balance due client?

Commission Regulation 10.8 (g)(1) states: "...A broker shall at all times keep detailed records of all funds coming into the broker's possession and all disbursements made by the broker."

RECORD MAINTENANCE

- ◆ Do you maintain a file containing invoices for all expenses charged to owners for maintenance of their property?



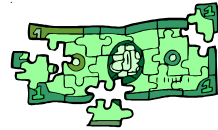
Commission Regulation 10.7 (b)(2) and (3) state: "Each principal broker shall maintain complete records pertaining to property managed for others. Such records shall include all contracts, financial transactions, receipts, statements, repair estimates and other documents relating to management of the property."

"All records required by Regulation 10.7 shall be maintained by the principal broker for three (3) years or such time as may be required by law, whichever is greater, and shall be open to inspection by and made available to the investigative staff of the commission at the firm's office or other location designated by the commission."

- ◆ Do you or does your firm or anyone or any entity related to you or your firm profit from maintenance activities performed on properties you manage?
- ◆ Are all profits received by you, your firm, or anyone or any entity related to you or your firm disclosed *in writing* to the owner of the property on which services are rendered?

Commission Regulation 8.5 (c) states:

“When acting as agent in the sale or management of property, a licensee shall not accept any commission, rebate, profit, payment, compensation or other valuable consideration from any source in connection with the property without full written disclosure to the party represented by the licensee.”



AGENCY REPRESENTATION DISCLOSURE

- ◆ Do all tenants receive written disclosure that your firm represents the owners of the properties?



Commission Regulation 8.1(a)(1) and (2)(b) & (c) states: “In any real estate transaction in which a licensee is acting solely as agent for a seller or lessor, the licensee shall disclose to a potential buyer or lessee, or to the buyer’s or lessee’s licensed agent, the licensee’s agency relationship with the seller or lessor. Such disclosure shall be made in a timely manner under the particular circumstances so as to avoid to the extent possible eliciting or receiving from the prospective buyer or lessee information which would

reasonably be expected to remain confidential and not disclosed to the seller or lessor, such as, for example, information concerning the real estate needs or motivations, negotiating strategies or tactics, or the financial situation of the potential buyer or lessee.

(2) When the disclosure is made to the licensed agent of the buyer or lessee, it is that licensee's duty to convey the disclosure to the buyer or lessee in a timely manner.

(b) In all cases, disclosure shall be in writing, but may initially be made orally and reduced to writing at a convenient time subject to the requirements of Regulation 8.1 (c). Evidence of the disclosure shall be maintained by the licensee.

(c) In all cases, however, such disclosure must be made before the buyer or lessee signs any document related to the transaction, such as an offer or lease or rental agreement."



AGENT-OWNED PROPERTIES

- ◆ Do agents licensed with your firm own rental properties?
- ◆ Are security deposits paid by tenants of rental properties owned by agents licensed with your firm held in your firm's trust account?
- ◆ If not, do you maintain written agreements signed by tenants of rental properties owned by agents licensed with your firm which authorizes the real estate agent/owner to keep the security deposits?



Commission Regulation 10.8 (h)(1) states: "All security deposits made under a rental or lease agreement shall be deposited in the principal broker's trust account, including those deposits made on property owned by any licensee licensed under the principal broker unless the licensee who owns the property has a written agreement with the tenant providing that the licensee may keep the security deposit in the licensee's separate account. A copy of any such agreement shall be furnished to the principal broker by the licensee."

Free Reference Materials Available from AREC

Trust Account Record Keeping Guide
Regulation 8 & 10 Quick-Reference Guide
Consumer and Licensee Guide
Principal and Executive Brokers' Self-Evaluation Guide
Agency Representation Brochure
Real Estate License Law & Regulations

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